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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/671,607	09/28/2000	Abel J. Rautenbach	01359.00002	7211
7590 03/11/2004 Banner & Witcoff Ltd Eleventh Floor 1001 G Street NW Washington, DC 20001-4597			EXAMINER NGUYEN, SON T	
			ART UNIT 3643	PAPER NUMBER

DATE MAILED: 03/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/671,607

Applicant(s)

RAUTENBACH, ABEL J.

Examiner

Son T. Nguyen

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3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 24-29,31,33-35** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5199442 (herein 442) in view of US 5411548 (herein 548).

For claim 24, 442 discloses a device for use in immobilizing animals comprising an elongated probe 200 and an electrical power source 100, said probe comprising a rear end, a front end 210 for insertion into the anal canal of an animal, first and second electrodes 218 spaced from each other on the outer surface of said probe and electrical conductors extending from the electrodes and adapted for connection to the electrical power source, and wherein the electrical power source supplies an electrical current of between about 250 mA and 400 mA (col. 4, line 6, col. 5, line 25, col. 6, line 38) with a potential of between about 1 and 11 Volts (col. 4, line 6, col. 5, line 25) and a frequency of 60 Hz. However, 442 is silent about a frequency of between about 20 and 50 Hz. 548 teaches a similar device as 442 in which 548 provides a source of power with a frequency between about 10 Hz to about 60 Hz (col. 2, lines 26-30) for different neuromuscular stimulation as desired by applying electrical pulses through the use of a rectal probe. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a frequency in the range of about 10 Hz and 60

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Hz as taught by 548 in the device of 442 in order to provide enough frequency for the desired neuromuscular stimulation.

For claim 25, 442 as modified by 548 (emphasis on 442) further discloses wherein the electrical power source supplies an electrical current having a potential of between 2 and 10 Volts (since the range is from 0-35 volts, any value within that range from 2-10 volts is applicable).

For claim 26, 442 as modified by 548 (emphasis on 548) further wherein the electrical power source supplies an electrical current having a frequency of about 30 Hz (col. 2, lines 26-30, the 10 to 60 Hz range includes 30 Hz).

For claim 27, 442 as modified by 548 (emphasis on 442) further discloses wherein the elongated probe has a right circular cylindrical configuration (fig. 2).

For claim 28, 442 as modified by 548 (emphasis on 442) further discloses wherein the front end has a tapered rounded tip 210.

For claim 29, 442 as modified by 548 (emphasis on 442) further discloses wherein the first electrode has an annular configuration and is located proximate the front end of the probe, and wherein the second electrode has an annular configuration and is located proximate the first electrode (see fig. 3).

For claim 31, 442 as modified by 548 (emphasis on 442) further discloses wherein the second electrode extends from a position proximate the first electrode to the rear end of the probe (see fig. 2).

For claim 33, 442 discloses a method of immobilizing an animal comprising the steps of: (a) inserting a probe 200 having a pair of electrodes 218 into the anal canal of

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the animal; and (b) applying a pulsed electrical current through the electrodes to the animal, said current having a frequency of 60 Hz, a potential of between about 1 and 11 volts (col. 4, line 6, col. 5, line 25) and a current strength of between about 250 and 400 mA (col. 4, line 6, col. 5, line 25, col. 6, line 38). However, 442 is silent about a frequency of between about 20 and 50 Hz. 548 teaches a similar method as 442 in which 548 provides a source of power with a frequency between about 10 Hz to about 60 Hz (col. 2, lines 26-30) for different neuromuscular stimulation as desired by applying electrical pulses through the use of a rectal probe. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a frequency in the range of about 10 Hz and 60 Hz as taught by 548 in the device of 442 in order to provide enough frequency for the desired neuromuscular stimulation.

For claim 34, 442 as modified by 548 (emphasis on 548) further discloses wherein the applying a pulsed electrical current step includes applying an electrical current having a frequency of about 30 Hz (col. 2, lines 26-30, the 10 to 60 Hz range includes 30 Hz).

For claim 35, 442 as modified by 548 (emphasis on 548) further discloses wherein the applying a pulsed electrical current step includes applying an electrical current having a potential of between about 2 and 10 volts (since the range is from 0-35 volts, any value within that range from 2-10 volts is applicable).

3. **Claims 30,32** are rejected under 35 U.S.C. 103(a) as being unpatentable over 442 as modified by 548 as applied to claims 24,27 above, and further in view of US 3933147 (herein 147).

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For claim 30, 442 as modified by 548 is silent about the first and second electrodes are separated by an annular groove in the probe. 147 teaches a probe having first and second electrodes 14,16 being separated by an annular groove in the probe as shown in fig. 2. It would have been an obvious substitution of functional equivalent to substitute the probe of 442 as modified by 548 with a probe having first and second electrodes 14,16 being separated by an annular groove in the probe as taught by 147, since both types of probe would allow for rectal insertion for immobilization.

For claim 32, in addition to the above, 147 teaches the electrodes being stainless steel electrodes (col. 6, lines 60-68). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the electrodes of 442 as modified by 548 out of stainless steel electrodes as taught by 147 in order to prevent corrosion or rust.

4. **Claim 36** is rejected under 35 U.S.C. 103(a) as being unpatentable over 442 as modified by 548 as applied to claim 33 above, and further in view of FR 2532150 A (herein 150). 442 as modified by 548 is silent about the animal being an ungulate. 150 teaches applying electrical current to an animal such as a sheep (as shown in fig. 2) which effect the rectum area (see abstract). Therefore, it would have been an obvious substitution of functional equivalent to one having ordinary skill in the art at the time the invention was made to employ the method of 442 as modified by 548 on an ungulate animal as taught by 150, since the subject of study is an animal (human or sheep) and

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the function of the device is to provide electrical stimulation in the rectum area (either by immobilization or relaxing).

Response to Arguments

5. Applicant's arguments with respect to claims 24-36 have been considered but are moot in view of the new ground(s) of rejection.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen
Primary Examiner, GAU 3643
March 8, 2004